REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 280 OF 2007**

% **Date of Decision** : 4th May, 2007.

Professor Ramesh Chandra .... Appellant.
Through Mr. R. Venkataramani, Sr. Advocate with
Ms.Neela Gokhale, advocate.

VERSUS

University of Delhi & another .... Respondents.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present Letters Patent Appeal has been filed by Prof. Ramesh Chandra (hereinafter referred to as the appellant, for short) against

the Order dated 27th February, 2007 disposing of the Writ Petition (Civil) No. 11287/2007 filed by the University of Delhi, inter alia, holding that the National Commission of Scheduled Caste (hereinafter referred to as the Commission, for short) is a recommendatory body and any observation made by it in it's order, dated 9th may, 2006 with regard to the functionaries of University of Delhi will not be of binding nature.

2. From the statement of facts filed by the appellant it is apparent that he is involved in several litigations with the University of Delhi pending in Allahabad High Court and this Court.

3. During the pendency of these litigations, the Commission constituted under Article 338 of the Constitution of India passed Order dated 9th May, 2006, the operative portion of which reads as under:-

> i. Vice-Chancellor and Registrar, Delhi University must ensure that the aforesaid three impugned Executive Council Resolutions of 17th October, 2005 relating to Prof. Ramesh Chandra, are withdrawn with immediate effect.
> ii. Prof, Ramesh Chandra be allowed to

continue to function as Director, ACBR in consonance with the Notification no. Estab.III/BRAC/95/9126 of 30th May, 1995, issued by the University of Delhi without fear.

iii. As committed by the Secretary, UGC before the commission the letter no.F.3-1/2002 (CU), dated 4th August, 2005 addressed to the Vice Chancellor be withdrawn forthwith.

iv. The letters dated 29th July, 2005 and 23rd December, or any other letter written by Sh. Sunil Kumar, IAS, Joint Secretary (Higher Education), Ministry of Human Resource Development, to Dr. Ved Prakash, Former-Secretary, University Grants Commission, and Sh.Bhupinder Singh Hooda, Chief Minister of Haryana, respectively be withdrawn forthwith.

v. The Commission also directs the Joint Secretary (Higher Education), Ministry of HRD that in future such errors resulting in injury being caused to any member of the Scheduled Caste community should not be committed, as the MHRD is responsible to ensure social justice to all in the country.

vi. The Commission further recommended that the UGC must ensure social justice to all citizens of the country and as a body monitoring Higher Education in the country should suo moto assume more responsibility towards the cause of upliftment of

Scheduled Castes.

vii. Copy of the Findings of Investigation and Recommendations be sent to Sh. R.S. Gaval, Chairman, Parliamentary Forum for SC/ST's for information and further necessary action, if any, as he is the person who brought this matter to the notice of the Commission.

viii. Copy of the Findings of Investigation and Recommendations be sent to the Visitor, University of Delhi (Hon'ble President of India), Chancellor, University of Delhi (Hon'ble Vice-President of India), Hon'ble Prime Minister sof India, Pro-Chancellor, University of Delhi (Hon'ble Chief Justice of India), Hon'ble Minister of Human Resource Development, to ensure that the above said recommendations/ directions are implemented by the UGC, MHRD and the University of Delhi in letter and spirit without any delay.

ix. The Vice-Chancellor and Registrar, University of Delhi, the Chairman & Secretary, UGC and the Secretary, Higher Education, Ministry of HRD, are hereby directed to ensure implementation of the above recommendations/directions and give action taken report on an affidavit within two weeks from the date of the issue of the Findings of Investigation and Recommendations, to the Commission".

4. Aggrieved, the University of Delhi filed a writ petition in this Court which was disposed of vide Order dated 27th February, 2007, inter alia, holding that the Commission cannot pass any order of binding nature as it is a recommendatory body. It has been further held that the directions given in the Order are not of binding nature. However, it has been clarified that so far as the order does not deal with the University of Delhi or its functionaries, it shall remain undisturbed.

5. Mr. P. Venkataramani, learned Senior counsel had drawn our attention to Article 338 of the Constitution of India and had stated that under Clause 5 sub-clause (b), the Commission is entitled to enquire into specific complaints with respect to deprivation of rights and safeguards available to the Scheduled Castes. He had also drawn our attention to Clause 8 which empowers the Commission to investigate into matters covered by sub-clauses (a) and (b) of Clause 5 and confers power of a civil court in respect of matters enumerated therein. It was submitted that the Commission is not a recommendatory body and its directions are final and binding on the

University of Delhi.

6. It is not possible to agree with the learned senior counsel that the Commission under Article 338 of the Constitution of India is an adjudicatory body which can issue binding directions or injunction orders. Clause 8 of Article 338 of the Constitution of India has conferred limited powers of a civil court on the Commission on matters relating to summoning and enforcing attendance of any person in India and examining him on oath, for discovery and production of documents, receiving evidence on affidavits, requisitioning any public document or copy thereof from any court or office, issuing commission for examination of witnesses and documents. It also has powers of a civil court in respect of matters which the President by a rule may confer. No such rule has been brought to our notice. While conferring limited powers of a civil court for some purposes, Article 338 has not given the Commission , the power to adjudicate and pass binding and executable decrees like a civil court. The above powers are procedural powers vested with a Civil Court, which have been given to the Commission for the

purpose of investigation and enquiry into the complaints in terms of sub-Clause (a) and (b) of Clause 5. A reading of Clauses 6 and 7 shows that the Commission is required to submit it's report, which is to be placed before each house of the Parliament along with the memorandum explaining the action taken or proposed to be taken on the recommendation made by the said Commission and in case of non-acceptance the reasons for the same. In case the report or any part thereof relates to matter with which a State Government is concerned, a copy of the report is required to be forwarded to the Governor of the State who is required to lay the report before the legislature of the State along with memorandum explaining the action taken or proposed to be taken on recommendation relating to the State and reasons for non-acceptance of the said recommendations. It is clear from the reading of Clauses 6-8 that the reports made by the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. It cannot be said that the reports of the said Commission are

alternative to the hierarchical judicial system envisaged under the Constitution of India.

7. The Supreme Court in the case of ***All India Overseas Bank SC and ST Employees' Welfare Association versus Union of India*** reported in (1996) 6 SCC 606 examined Clause 8 of Article 338 of the Constitution of India and observed that while investigating a matter under sub-clause (a) or enquiring into a complaint under sub-clause (b) of Clause 5 of the said Article, the Commission has been given limited procedural powers of a civil court. It has been held that the said powers are limited by their nature and the Commission does not have any power like that of a civil court to issue temporary or permanent injunction. Such powers do not inhere in the Commission nor can such power be inferred or derived from reading of Clause 8 of Article 338 of the Constitution of India.

8. A Division Bench of this Court in ***Dr. (Ms.) Deepshikha Jiwan Pandit versus NCERT*** reported in ILR (2003) 2 Del. 131 had occasion to consider Clauses 5 and 8 of Article 338 of the Constitution of India and held that it appears that though the

Commission has power to enquire into specific complaints and make it's report but the same is recommendatory in nature. However, the Division Bench left the matter at that stage as the counsel for the petitioner in the said case did not seriously contend that the "advice" of the Commission was mandatory and binding. It was however observed that the "advice" given by the Commission should not be ignored by the authorities.

9. A more direct judgment on the issue is in the case of ***Gulmarg Restaurant versus Delhi Development Authority*** reported in ILR (2005) 1 Del. 508 in which it was observed as under:-

> "**29.** It may be noticed that the appellant had even approached the National Commission for Scheduled Caste and Scheduled Tribes and directions were issued on 02.08.1997. These directions were, however, issued in a pending disputed matter. In any case within the Constitutional Scheme of Article 338 of the Constitution of India, the observations of such a Commission can only be recommendatory in nature. The directions passed by the said Commission seek to transfer the property in favour of the appellant a price of Rs. 12,42,700/-, can hardly be acceptable as either the auction bid was rightly rejected or wrongly rejected. It would not proper for any other authority to determine the price. However, we are not required to deal any further with this issue since those are only

recommendatory in nature."

10. In view of the legal position, we do not find any infirmity in the order passed by the learned Single Judge and the present Appeal is accordingly liable to be dismissed. We may also state here that the present Appeal is also barred by limitation by about 16 days. Normally, we would have issued notice on the said application but in view of the fact that on merits itself we do not find that any case for interference is made out, we have dismissed the appeal on merits. All pending applications are also disposed of.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 04, 2007.
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